

September 4, 2020

Mr. Kevin Hedge
Baltimore Gas & Electric Company
1699 Leadenhall Street
Baltimore, MD 21230

Re: BGE Fleet Services at 7210 Windsor Boulevard
Forest Conservation Variance
Tracking #04-20-3300

Dear Mr. Hedge:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability (EPS), Title 6 Forest Conservation was received by this Department on August 17, 2020. This request proposes base the afforestation required by Section 33-6-111 of the Forest Conservation Law on the 3.8-acre limit of disturbance (LOD) rather than the entire 44.0-acre property in order to expand the outside storage area at the Baltimore Gas & Electric Company's (BGE) fleet services property. The proposed work includes expanding the existing paved storage yard and the construction of five above-ground bio-retention facilities, two bio-swale facilities, and two stormwater management facilities. No clearing of forest or specimen trees is proposed as none exist within or near the LOD. Using the LOD as the net tract area on the forest conservation worksheet would result in a 0.6-acre afforestation requirement, as opposed to the 6.6 acres of afforestation required under full compliance.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner to show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The property is already functioning as a fleet services facility for BGE. Given that no change of use is proposed, and an outside storage area already exists, the applicant is already realizing beneficial use of the property. Moreover, denying the requested variance would not prohibit the proposed storage area expansion,

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only the cost of meeting the requirements of this law in making the proposed improvements. Consequently, full application of the law to the entire property would not deprive the applicant of all beneficial use of the property, and we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due to the unique budgetary circumstance of providing 6.6 acres of afforestation under full compliance and not the general conditions of the neighborhood. Consequently, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The surrounding neighborhood consists of medium to high-density single-family residential areas, neighboring BGE facilities, as well as other commercial properties of various uses. Given that this long standing land use will not change as a result of granting this variance, we find that the proposed outside storage area expansion will not alter the essential character of this neighborhood and that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The project will not impact any streams, wetlands, floodplains, or associated buffers, and no forest will be cleared. Additionally, the proposed project includes upgrades to stormwater management, which will ultimately benefit water quality. As such, this Department finds that the proposed variance will not adversely affect water quality. Consequently, this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any prior actions creating a condition or circumstance to necessitate this variance request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Reducing the afforestation obligation based on the LOD for implementing an outside storage area expansion would be consistent with the spirit and intent of the Forest Conservation Law. This is especially true given that no forest or specimen trees will be impacted, and 0.6 acre of afforestation in a priority planting location will be provided. Therefore, this criterion has been met.

Based on our review, this Department finds that the required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. The LOD shall be limited to the 3.8-acre area shown on the plans accompanying the variance application.
2. The required 0.6 acre of afforestation shall be provided prior to issuance of any grading or building permit. The afforestation requirement must be provided via the purchase of credit in a County-approved forest planting bank, if available. A letter authorizing purchase of credit from an EPS-approved forest planting bank will be provided once the FCP is approved. If no credit is available for purchase at that time, the afforestation requirement may be provided via a \$14,374.80 fee-in-lieu (based on \$0.55/square foot).
3. The following note must be on all plans for this project:

“A variance was granted on September 4, 2020 by Baltimore County Dept. of Environmental Protection & Sustainability to allow afforestation requirements to be based on the 3.8-acre limit of disturbance rather than the entire 44.0-acre property for implementation of an outside storage area expansion. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met including 0.6 acre of offsite afforestation at an EPS-approved location.”
4. The Forest Conservation Plan (FCP) must be revised according to EIR comments and approved by EIR prior to grading plan or permit approval. Please include two Forest Conservation Worksheets, one for the project LOD and one for the entire site acreage. The note in condition 3 above must also be on the FCP.
5. Granting this variance does not exempt future development activities on this property from full compliance with the Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the property owner sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

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If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens
Director

DVL/lbe

- c. Mr. Jim Burkman, Baltimore Gas & Electric Company
Mr. William Kopajtic, EN Engineering LLC

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Owner's Signature

Date

Printed Name